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सं. 10] नई दिल्ली, मार्च 21—मार्च 27, 2004, शनिवार/चैत्र 1—चैत्र 7, 1926
No. 10] NEW DELHI, MARCH 21—MARCH 27, 2004, SATURDAY/CHAITRA 1—CHAITRA 7, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 10 मार्च, 2004

आ.अ. 24.—यतः, फरवरी, 2002 में 362-जेवर (अ०जा०) निर्वाचन क्षेत्र से उत्तर प्रदेश विधान सभा के साधारण निर्वाचन के लिए निर्वाचन लड़ने वाले अभ्यर्थी, श्री राजपाल सिंह, मुमरेजपुर, डा० धिगरावली, जिला गौतमबुद्धनगर, उत्तर प्रदेश को भारत निर्वाचन आयोग द्वारा लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10-क के अधीन आदेश सं० 76/उ०प्र०-वि०स०/2002, तारीख 07 नवम्बर, 2002 के द्वारा जला निर्वाचन अधिकारी, गौतमबुद्धनगर की इस रिपोर्ट के आधार पर कि उक्त अभ्यर्थी द्वारा निर्वाचन व्ययों का लेखा विधि द्वारा अपेक्षित रीति से प्रस्तुत नहीं किया गया, विधि द्वारा अपेक्षित रीति से लेखा दाखिल करने में असफल रहने के कारण उक्त आदेश की तारीख से तीन वर्षों की कारावासी के लिए निर्दिष्ट कर दिया गया था;

और यतः, श्री राजपाल सिंह ने अपने अभ्यावेदन, दिनांक शून्य, जो आयोग में तारीख 24 फरवरी, 2004 को प्राप्त हुआ, में यह बताया कि भूलवश उनका मतदान एजेंट निर्वाचन व्यय लेखे के साथ वांछित शपथ-पत्र आदि जमा नहीं कर पाया था और यह कि आयोग का नोटिस उन्हें प्राप्त नहीं हो सका था क्योंकि वे निर्वाचन सम्पन्न होने के तुरन्त बाद दिल्ली आ गए थे। और यतः, अब उन्होंने अपने दिनांक 10 मार्च, 2004 के अभ्यावेदन के साथ वांछित शपथ-पत्र आदि भी प्रस्तुत कर दिए हैं और वे स्वयं आयोग के समक्ष उपस्थित हुए और उनकी व्यक्तिगत सुनवाई के बाद प्रकरण के गुणावगुणों पर विचार कराने के पश्चात् आयोग ने यह निष्कर्ष निकाला कि श्री राजपाल सिंह द्वारा अपनी निर्वाचन व्ययों का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में हुई असमर्थता साक्ष्यिक नहीं थी व उनके नियंत्रण में नहीं थी तथा उन पर उक्त अधिनियम की धारा 10क के अन्तर्गत निर्दोषता उन पर नहीं बोयी जानी चाहिए थी;

अतः अब, निर्वाचन आयोग ने, लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम की धारा 10-क के अधीन, आयोग के तारीख 7 नवम्बर, 2002 के आदेश द्वारा श्री राजपाल सिंह पर आरोपित निरहता को तारीख 10 मार्च, 2004 से शेष अवधि के लिए हटा दिया है।

[सं० उ०प्र०-वि०स०/362/2002]

आदेश से,

ए० एन० झा, उप निर्वाचन आयुक्त

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 10th March, 2004

O.N. 24.—Whereas, Shri Rajpal Singh, Mumrejpur, P.O. Chingrawali, Distt. Gautambudhnagar, Uttar Pradesh, contesting candidate for the General Election to Uttar Pradesh Vidhan Sabha from 362-Jewar (SC) Constituency, held in February, 2002, was disqualified by the Election Commission of India for failure to file his account of election expenses in the manner required by law vide its order No. 76/UP-LA/2002, dated 07th November, 2002 under section 10A of the Representation of the People Act, 1951, for three years from the date of the order on the basis of the report of the District Election Officer, Gautambudhnagar.

And whereas, Shri Rajpal Singh has stated in his representation, dated nil, which was received in the Commission on 24-02-2004 that his election agent forgot to submit the required affidavit etc. alongwith the account of election expenses and that he could not receive the Commission's notice as after the completion of election, he immediately left for Delhi. And whereas, now he has submitted the required affidavit etc. alongwith his representation dated 10th March, 2004, and made himself present before the Commission and after hearing him in person, considering the case on its merits, the Commission has concluded that the failure to lodge the account in the manner required by law by Shri Rajpal Singh was not intentional and was beyond his control and that the disqualification imposed on him, under Section 10A of the Act, mentioned above, should not have been imposed.

Now, Therefore, the Election Commission, in exercise of its powers conferred by Section 11 of the Representation of the People Act, 1951 (43 of 1951), has, vide its order dated 10-03-2004 removed the disqualification of Shri Rajpal Singh imposed upon him vide Commission's Order, dated 7th November 2002 under section 10A of the said Act, for the remaining period with effect from 10-03-2004.

[No. U.P.-L.A./362/2002]

By Order,

A. N. JHA, Dy. Election Commissioner

नई दिल्ली, 22 मार्च, 2004

आ.अ. 25.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग कर्नाटक राज्य में, राज्य सभा के सदस्य के रूप में डा० विजय मालया के निर्वाचन को प्रश्नगत करने वाली श्रीमती डी. के. तारादेवी सिद्धार्थ द्वारा निर्वाचन याचिका सं० 2002 का 2 में दाखिल बंगलौर स्थित कर्नाटक उच्च न्यायालय के 20 नवम्बर, 2003 के आदेश को इसके द्वारा प्रकाशित करता है। (आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं० 82/रा०स०-कर्ना०/2/02/2003]

आदेश से,

ए० के० मजुमदार, सचिव

New Delhi, the 22nd March, 2004

O. N. 25.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Karnataka at Bangalore dated 20th November, 2003 in election Petition No. 2 of 2002 filed by Smt. D.K. Tharadevi Siddhartha calling in question the election of Dr. Vijay Mallya as a Member of the Council of States from the State of Karnataka.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 20th day of November, 2003

Before

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

Election Petition 2/2002

Between:

Smt. D. K. Tharadevi Siddhartha
W/o Siddhartha Reddy
R/a 'Krishna Ashraya'
Mudigere, Chikmagalur-577132

Petitioner

(By Sri G. S. Visveshwara for Sri Arvind Kumar Adv.)

And :

1. Dr. Vijaya Mallia S/o late Vital Mallia
R/a # 3. Vittal Mallia Road
Bangalore
2. Sri Janardhana Poojary
S/o Jarappa Poojary
R/a Channamma Kutira B. C. Road,
Bantwal Taluk D. K. District
3. Smt. Prema Cariappa W/o I. M. Cariappa
R/a # 33/4, Thyagaraj Layout
Manrthi Sevanagar,
Bangalore 33

4. Sri M V Rajashekaran S/o Veerasheeti
R/a # 20/1, Kanakapura Basavanagudi,
Bangalore 4

Respondents

(By Sri Udaya Holla for Sri S. R. Shivaprakash

Adv. For 1; R2-4 are placed exparte)

This Election Petition is filed under Section 81 of the Representation of People Act, 1951 praying to declare that the election of R1 as contained in annexure J declaring the 1st respondent as duly elected to the Council of States as void under Sec. 100(1)(a) and Sec. 100(1)(d)(i) of Representation of People Act, 1951, etc.

This Election Petition having been reserved and coming on for Pronouncement of Orders this day, the Court made the following:

ORDER

The Election Petitioner has filed this petition under Section 83 of the Representation of People Act, 1951 to declare the election of the 1st respondent to the Council of States as void and for a further declaration that the petitioner should be declared as the elected candidate in place of the 1st respondent.

The Election Commission of India by a notification dated 7.3.2002, notified the number of seats to be filled up to the Rajya Sabha from the Council of States including from the State of Karnataka. As per the calendar of events published, the last date for filing nomination papers was 14-3-2003, the scrutiny of the nomination papers was to be held on 15-3-2002, the last date for withdrawal of nomination was 18-3-2002, and the date of the elections was on 27-3-2002. The election petitioner herein and the 1st respondent filed their nominations to be elected as Rajya Sabha members from the State of Karnataka. When the nominations papers were taken up for scrutiny on 15.3.2002, the election petitioner filed her objections against the acceptance of the nomination of the 1st respondent on the ground that the 1st respondent is not an ordinary resident of Shanthinagar Constituency and his name was wrongly registered in the electoral list. The Returning Officer after holding an enquiry overruled the objections and in the elections that was held. The 1st respondent was declared elected by a declaration dated 27.3.2002 having secured 46 votes as against the petitioner who had secured 34 votes. This declaration of results is questioned by the election petitioner by filing the petition on 27.5.2002.

According to the election petitioner, the 1st respondent was not an 'ordinary resident' of Shanthinagar Constituency being a 'nonresident Indian' and having business interest abroad. That he had declared as residing at Dubai in his income tax returns and he has also been held as a non-resident Indian by the Directorate of Enforcement. He only visited Bangalore temporarily without an intention to 'ordinarily reside' here and he got his name registered in the electoral roll only for the purpose of contesting the Rajya Sabha elections. The entering of his name in the electoral roll was by a false declaration made before the Electoral Registration Officer and registering his name is an illegal act.

The Returning Officer accepted the nomination of the 1st respondent improperly.

That being a non-resident Indian and having his business interests abroad, he owes allegiance and adherence to foreign State and therefore disqualified under Art. 102 of the Constitution.

Upon notice of this election petition, 1st respondent has entered appearance and has filed his written statement, while respondents 2, 3 and 4 have not contested the petition.

Respondent 1 has stated in his written statement that :

- (i) The election petition is liable to be dismissed as being presented beyond the period of 45 days as per Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the RP Act, 1951 for brevity). According to him, the declaration of election results was on 27.3.2002 and the election petition was presented on 27.5.2002 which was beyond 45 days.
- (ii) That the Election petition does not disclose the cause of action within the meaning of Section 100 of the RP Act, 1951.
- iii) That the grounds stated in Article 102 (10)(d) or (e) are not attracted to the facts of the case.
- (iv) That petitioner cannot question the inclusion of the name of 1st respondent in the electoral list, by means of this election petition.
- (v) That the election petition is not verified as required under Order 6 Rule 15 of Code of Civil Procedure and the copies supplied to the respondent is not attested as true copies.

The 1st respondent has denied the allegation that he is not an 'ordinary resident'. According to him the very address in the cause title furnished by the election petitioner indicates that he is residing at No. 3 Vittal Mallya Road, Bangalore which proves that he is an ordinary resident of Bangalore. By merely declaring as a 'non-resident Indian' under the provisions of the Foreign Exchange Management Act, 1999 and Foreign Exchange Regulation Act and Income Tax Act and having business interests abroad will not make such a person as not an ordinary resident.

He further states that, he has been residing in Bangalore at No. 3 V M Road for well over 30 years in fact, the road (Dr Vittal Mallya Road) is named after his late father Dr Vittal Mallya; that, the 1st respondent is a citizen of India by birth and he is holding an Indian passport where his address is shown as Vittal Mallya Road, Bangalore; that he has set up a hospital in the name of his grandfather at Mallya Road and he is the Chairman of UB World Group of Companies which has its HQ at Bangalore; besides he has been the nominee appointed and on behalf of the Government of Karnataka to the Managing Committee of the Bangalore Turf Club from 1995 to 1998 and from 1999 till date; that on 4-2-2002, the Government of India has addressed a letter to this respondent at his Vittal Mallya Road for being considered for appointment as a part time non-official Director on the Board of Air India Ltd; that his name was registered in the electoral roll in the year 1999 and on that basis he had also contested the elections to the Council of States from Karnataka in 2000.

On the allegation that the respondent owes allegiance or adherence to foreign State, it is denied that he owes any such allegiance or adherence to any foreign State. He has therefore, sought for dismissal of the election petition.

The parties have also filed draft issues.

On the basis of the pleadings, the following issues are framed :

1. Whether the petitioner proves that the first respondent was not qualified to contest the election to the Council of States from Karnataka held on 27-3-2002?
2. Whether the petitioner further proves that the registration of the first respondent as a voter in Shanthinagar Assembly Constituency, Bangalore is illegal? If so, he was not entitled to contest for the election to the Council of States held on 27-3-2002.
3. Whether the petitioner further proves that the first respondent is not an ordinarily resident of Shanthinagar, Bangalore as contemplated under the Representation of People Act?
4. Whether the petitioner proves that there was any improper acceptance of nominations for the election to Council of States from Karnataka held on 27.3.2002?

5. Whether the petitioner proves that the first respondent owes allegiance or adherence to a foreign State within the meaning of Art.102 of the Constitution of India and therefore, he is disqualified for being chosen as a Member of Parliament?
6. Whether the election of the first respondent to the Council of States from Karnataka held on 27-3-2002 is void under Sec.100(1)(a) and Sec.100(1)(d)(i) of the Representation of People Act, 1951?
7. Whether the Election Petition is liable to be dismissed as it is not verified in the manner laid down under the Code of Civil Procedure, 1908?
8. Whether the Election Petition is liable to be dismissed on the ground that the petitioner has not served a true copy of the Election Petition as required under Sec.81 of the RP Act, 1951?
9. Whether the petitioner has not deposited the cost as required under Sec.117 of the RP Act?
10. Whether the petition is liable to be dismissed on the ground of limitation?
11. Whether the Election Petition is liable to be dismissed for non-compliance of the provisions of Secs.117, 81 and 86 of the Representation of People Act?
12. To what relief the petitioner is entitled?

In support of the issues, the parties have led evidence. The election petitioner examined herself as PW1 and summoned the Addl. Commissioner of Income Tax, Calcutta - Mr. Rajib Kumar De and the Revenue Officer L. Srinivasaiah and examined them as PWs 2 and 3. Petitioner apart from adducing oral evidence, has also produced and got marked the following documents viz. Copy of calendar of events, declaration of results and the objections filed to the acceptance of nomination before the Returning Officer as Ex.P1 to P7; the letter addressed to the Electoral Registration Officer which is dated 17-3-2002 as Ex. 8. the letter dated 17-3-2002 addressed to the Chief Election Commissioner as Ex. P9; the files containing the Income Tax Returns of the 1st respondent as Ex. P11—17 and; the affidavits as Ex. P18-19; the objections filed by Sri Purushotham and Sri, R. Prabhakar as Ex. P20 and P 21 and; the entire file relating to the objections for application of Dr. Vijay Mallya as Ex.P22.

The 1st respondent did not chose to examine either himself or any witnesses in support of his defense But, however the followings documents got marked through the petitioner during her cross-examination.

1. Ex.R1 - Order of the Electoral Registration Officer.
2. Ex.R2 - Passport
3. Ex.R3 - Notification dated 25-9-2002
4. Ex.R4 - Copy of election petition
5. Ex.R5 - Certificate of security deposit
6. Ex.R6 - Notification for summer vacation of High Court.

The evidence of the petitioner and her witnesses will be referred to at the appropriate place while discussing issues.

In order to answer the issues, the relevant provision of Representation of Peoples Act, 1951 regarding the presentation of an election petition and the grounds available for challenging the election is referred to herein. An aggrieved person can challenge the elections of a returned candidate by presenting an election petition under Sec.81 on the grounds stated in Sec. 100(1) and Sec.101. Relevant clauses of Section 81 is extracted herein omitting what is unnecessary.

Sec. 81: Presentation of petitions :

1. An election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Sec.100 and Sec.101 to the High Court by any candidate at such election or any elector within forty five days from, but not earlier than, the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation : In this Sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

2. Omitted

3. Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

The grounds on which the elections can be challenged are stated under Sec. 100 and 101. The only ground on which the election petitioner has challenged the election of 1st respondent is under Sec. 100(a) and 100(d)(iv) which will be referred to while discussing the relevant issues.

Findings on Issues :

Issue Nos. 2, 3 and 4 all relate to the question of correctness and legality of registering the 1st respondent as a voter in Shanthinagar assembly constituency of Bangalore on the ground that he is not an 'ordinary resident'. Hence, they are all taken together.

It is now well settled position of law that the inclusion or exclusion of the name of a person as a voter in the electoral list cannot be a ground of challenge in an election petition. The said issues are answered holding that the consideration of the said issues are beyond the purview of an election petition. Two decisions of this Court is referred to herein in support of the above proposition. They are :

This Court in *Sree Kannan Vs. Returning Officer*-ILR 1998 KAR 1081 relying on the following Supreme Court decisions in *Vaidyanatha Vs. Seetharam*—AIR 1970 SC 314; *Wupasana Rao Vs. Odio*—AIR 1971 SC 2123 and *Narendra Vs. Manikya Rao*—1977 SC, 217 has hold that "Any dispute relating to inclusion of the name of a person in a electoral roll would not be a subject matter of election petition".

Similarly, in *Robert J Vs. Ram Jethmalani*-ILR 1990 KAR 1907, it has been held that the inclusion of the name of a person in the electoral roll cannot be a ground to challenge an election in an election petition under Sec. 81 of the RP Act, 1951; hence, the issues are answered against the petitioner.

Issue Nos. 1, 5 & 6;

These three issues are taken up together for convenience. These issues arise on the contention of the petitioner that the election of the 1st respondent has to be declared as void on the ground mentioned in Sec. 100 (1)(a) and 100 (d)(iv) of the Representation of Peoples Act, 1951 and Art. 102 of the Constitution.

Sec. 100 (1) of the Representation of Peoples Act, 1951 reads as under :

Sec. 100 (1) : Subject to the provisions of sub-sec. (2), if the High Court is of the opinion

- (a) that on the date of his election, returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution of this Act or the Government of Union Territories Act, 1963 (20 of 1963)
- (b) xxx
- (c) xxx
- (d) xxxx

The High court shall declare the election of the returned candidate to be void.

Relevant clause of Art. 102 of the Constitution reads as under :

102 : Disqualifications for membership :

- I. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—
 - a. Xxxx
 - b. Xxxx
 - c. Xxxx
 - d. if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State or is under an acknowledgement of allegiance or adherence to a foreign State;
 - e. if he is so disqualified by under any law made by parliament.

Elaborate argument was addressed by petitioner's learned counsel Sri G.S. Visveshwara on this point viz., that having regard to language of Sec. 100(1)(a) of Representation of Peoples Act, 1951 read with Art. 102(d) of the Constitution of India, 1st respondent must be held to owe 'allegiance' or 'adherence' to a foreign State as admittedly, he is a 'non-resident Indian'. In support of his arguments, counsel referred to the income tax returns filed before the Income Tax authority by 1st respondent wherein he has voluntarily declared himself as a 'non-resident Indian' which according to the counsel necessarily means he must be having business interests in foreign countries and consequently, owes allegiance or adherence to the said countries. The evidence of the petitioner who has been examined as PW. 1 on these two issues is

"Dr Mallya being an NRI has allegiance, adherence to a foreign State and as such is disqualified for the membership of Council of the State. Dr. Mallya's permanent residence is at UAE, Dubai. He does not permanently reside at Bangalore. He has his business in UAE, USA, UK and South Africa. He is an income tax assessee at Calcutta. Dr. Vijay Mallya is following the rules of foreign State. He is also paying taxes in foreign states. He has also mentioned in the income tax returns filed by him that he is a non-resident Indian." In cross-examination she has admitted what she means by 'allegiance' in the following terms: "It is true that when a person owes allegiance to a State, he becomes the citizen of that State." But, she also admits that "it is true that Vijay Mallya has floated large number of Indian companies and also is the Chairman and Director of some such companies." On the requirement of a person taking oath when he becomes a Member of Parliament, it is stated by her as: "it is true that when a person is elected as a MP, he has to take the oath of allegiance in Form 3 before he is admitted into the Parliament. It is true that Vijay Mallya is admitted to the Parliament as its Member. Regarding her source of information to say that Vijay Mallya is a non-resident Indian, she admits it is based on the information furnished by her party members and on the basis of the record. She admits that she is not personally aware of Vijay Mallya or his affairs."

The income tax returns filed by the 1st respondent before the Income Tax Department at Calcutta for the accounting year 1995-96 to 2000-2001 are marked as Ex. P11 to P16. Ex. P11 contains the Order of the Commissioner of Income Tax along with the returns filed by the 1st respondent. He has been held Under Sec. 115(B) and (C) of the Income Tax Act as 'non-resident Indian' and assessed as such. For the accounting year 1996-97, 1997-98, the same status continued up to the accounting year 2001-2002. PW2—Rajib Kumar De who is the Additional Commissioner of Income tax, Calcutta states on the basis of the records that Vijay Mallya is a citizen of India and that the filing of returns has nothing to do with the residence of a person. Thus what emerges from the evidence and Ex. P 11-16 is that, 1st respondent declared himself as a non-resident Indian for claiming benefits under the Income Tax Act. On the question of his owing allegiance or adherence to any foreign country there is no evidence. Per contra the evidence is he is a citizen of India who had contested the elections to Rajya Sabha in the year 1999.

Article 102 is a constitutional disqualification for a person for being a member of either of the house of parliament if he is not a citizen of Indian or has voluntarily acquired the citizenship of foreign state or is under any acknowledgement of allegiance or adherence to foreign state.

There is no dispute that 1st respondent is a citizen of India nor is the case of the petitioner that he has acquired voluntarily citizenship of a foreign State. But, the only contention is that he is under an acknowledgement of allegiance or adherence to a foreign State.

The word 'allegiance' and 'adherence' has not been defined in the Constitution. Hence, various dictionaries are referred for a proper understanding or the meaning of the said words. According to the Oxford dictionary 'allegiance' means "duty of a subject to sovereign or Government-loyalty."

In Blacks Law dictionary, 7th Ed. 'allegiance' is defined as—

Allegiance : A citizen's obligation of fidelity and obedience to the government or sovereign in return for the benefits of the protection of the state. Allegiance may be either an absolute and permanent obligation or a qualified and temporary one.

In The Words & Phrases Volume 3, the meaning of 'allegiance' is summarily stated by quoting various decisions and authors, as below :

By 'allegiance' is meant the obligation of fidelity and obedience which an individual owes to the Government under which he lives or to his sovereign in return for the protection he receives. *Imbrie V Marsh*, 68 A.2d 761, 763, 5 NJ Super 239.

The 'allegiance' contemplated by the Nationality Act is not to blood, race, or creed, but is the obligation of fidelity and obedience to the Government in consideration for protection that government gives. *US V Kuhn*, DCNY 49 F. Supp. 407, 414.

'Allegiance', as the term is generally used, means fealty or fidelity to the Government of which the person is either a citizen or subject. *Murray V The Charming Betsy*, 6 U S 2 Cranch, 64, 120, 2 L. Ed. 208.

'Allegiance' was said by Mr Justice Story to be 'nothing more than the tie or duty of obedience of a subject to the sovereign, under whose protection he is'. *United States V Wong Kum Ark*, 18 S. Ct. 456, 461, 169 US 649, 42 L.Ed. 890.

Allegiance is that duty which is due from every citizen to the state, a political duty binding on him who enjoys the protection of the commonwealth, to render service and fealty to the federal government. It is that duty which is reciprocal to the right of protection, arising from the political relations between the government and the citizen. *Wallace V Harmstad*, 44 Pa (8 Wright) 492, 501.

By 'allegiance' is meant the obligation to fidelity and obedience which the Individual owes to the government under which he lives, or to his sovereign, in return for the protection which he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. A citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or sovereign, and an alien while domiciled in a country owes it a temporary allegiance, which is continuous during his residence. *Carlisch V United States*, 83US 147, 16 Wall 147, 154, 21 L.Ed. 426.

'Allegiance', as defined by Blackstone, is the tie or ligamen which binds the subject to the King, in return for that protection which the King affords the subject. Allegiance, both expressed and implied, is of two sorts, the one natural, the other local, the former being perpetual, the latter temporary. Natural allegiance is such as is due from all men born within the King's dominions immediately upon their birth, for immediately upon their birth they are under the King's protection. Natural allegiance is perpetual, and for this reason, evidently founded on the nature of government. Allegiance is a debt due from the subject upon an implied contract with the prince that so long as the one affords protection the other will demean himself faithfully. Natural-born subjects have a great variety of rights which they acquire by being born within the King's liegance, which can never be forfeited but by their own misbehaviour; but the rights of aliens are much more circumscribed, being acquired only by residence, and lost whenever they remove. If an alien could acquire a permanent property in lands, he must owe an allegiance equally permanent to the King, which would probably be inconsistent with that which he owes his natural liege lord; besides, that thereby the nation might, in time, be subject to foreign influence and feel many other inconveniences."

In *Corpus Juris* Volume 3 A at Pg. 251, 'allegiance' has been defined as "fealty or fidelity to the government of which the person is either a citizen or subject, the duty which is due from every citizen to the State; a political duty, binding on him; who enjoys the protection of the commonwealth, to render service and fealty to the federal government; the obligation of fidelity and obedience which the individual owes to the government or to the sovereign under which he lives in return for the protection he receives; that duty which is reciprocal to the right of protection, arising from the political relations between the government and the citizen."

'Adherence' has been defined by Oxford dictionary as 'stick fast to (substance)' give support to '(agreement, opinion, party)', behave according to '(rules, plan, norms)'.

The word 'acknowledge' has been defined in the Shorter Oxford English Dictionary as "to own the knowledge of, to confess, to admit as true, to recognise. Acknowledgement has been defined as the act of recognising the position or claims. A declaration or avowal of an act or document.

Websters Third International Dictionary defines the word 'acknowledgement' as 'recognise'. Indicate recognition and acceptance.

In the debates of the Constituent Assembly while introducing Art. 102 (corresponding to draft Art. 83) of the Constitution in the present form, the phrase 'or is under any acknowledgement of allegiance or adherence to a foreign state' is used in a sense 'akin to the relationship of a citizen of India with his government' is clear by the statement of H V Kamath while debating on the amendment introduced by Dr Ambedkar. The same is extracted herein and reads thus :

The Honourable Dr B R Ambedkar : Mr President, Sir, I move :

"That for sub-clause (d) of clause (1) of Article 83, the following be substituted :—

(e) If he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State, and;

Sir, I am following the sound maxim which I laid down a few minutes ago that as far as possible, we might dispense with needless verbiage and try to be as brief as possible, of course, without sacrificing the meaning or significance or importance of an article, and to compress it into as few words as possible. Brevity is not merely the soul of wit; it is also the soul of truth. Here, I feel that in sub-clause (d) of article 83, the first part is adequate to cover any circumstance arising out of the second part of sub-clause (d). A person who is under any acknowledgement of allegiance or adherence to a foreign power, if he is disqualified, it stands to reason, it follows *ipso facto* that a person who is a subject or a citizen, which is a matter of graver moment than merely owing allegiance or adherence to a foreign power, must be disqualified. A subject or a citizen or one who is entitled to the rights or privileges of a subject or a citizen of a foreign power, certainly stands in a category which in comparison with the first part of the sub-clause of this article, is of more serious import. If we disqualify a person who merely owes allegiance or adherence to a foreign power, we need not explicitly say that a subject or a citizen is disqualified. If one category is disqualified, in my humble judgement it must follow as the night doth the day, that a citizen or a subject must also be disqualified. I therefore move, in the interests of brevity and elimination of unnecessary verbiage, that this amendment be accepted (emphasis supplied by me).

Thus, by a reading of the definitions of the words 'allegiance', 'adherence' and 'acknowledgement' as defined by various dictionaries and the meaning given by Blackstone and the debates of the Constituent Assembly and also the companion words occurring in Art. 102 of the Constitution, 'allegiance' or 'adherence' to a foreign State means, the subject must have a tie with foreign power in return of which he acknowledges his obedience or fidelity to the said foreign power, akin to the relationship of a citizen to his government. In other words, in the words of Blackstone—"there exists an express or implied contract between the subject and the foreign power under which the latter would protect the former who in return demean himself faithfully" Normally every citizen of India as long as he continues as a citizen can be said to owe allegiance or adherence to Indian Government. However, when a dispute arises that such a person as in this case, owes allegiance to a foreign power, the burden is on the complainant to establish the said fact by evidence.

In this case petitioner except stating in her evidence that the 1st respondent owes allegiance and adherence to foreign country, no other evidence is adduced on this point. Besides, she has not even named the foreign country to which the 1st respondent owes allegiance. However, petitioner wants the court to hold the 1st respondent as owing allegiance or adherence only on the basis that 1st respondent is a 'non-resident Indian' and being a non-resident Indian, he has his business interests in foreign countries. What this contention over looks is the difference in being loyal to a foreign power and having business interests in a foreign country. The business interests by its very nature transcends territorial limits of a country and every citizen has a right to do business unless restricted by law. Therefore, the argument that a 'non-resident' Indian having business interests abroad should be held as owing allegiance or adherence to foreign power deserves to be rejected. If this argument fails, as stated, petitioner has not adduced any other evidence to prove that 1st respondent owes allegiance or adherence to a foreign power. The petitioner therefore, has miserably failed to prove that 1st respondent owes allegiance to foreign power. Hence, the issue is answered that holding that the petitioner has failed to prove that 1st respondent owes allegiance or adherence to any foreign country suffering a disqualification under Art. 102 (1)(d) of the Constitution.

Issue No. 7 :

The burden of proving this issue is on the 1st respondent. Sec. 83(c) of the Representation of Peoples Act, 1951 states that an election petition shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code for the verification of the pleadings. The proviso states where any corrupt practice is alleged, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. In this case, every page of the election petition has been signed by the petitioner and the verification column of the petition reads as under :

"I Smt. D K Taradevi Sidhartha, W/o Sri Sidhartha Reddy, the petitioner herein do hereby declare that the statements in paras 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14 are true to my personal knowledge, and the statements made in paras 7, 8, 9 are true to the best of my information, which I reasonably believe to be true, to the best of my knowledge and belief".

Order 6 Rule 15, CPC provides that every pleading should be verified at the foot by the party and the person verifying shall specify, by reference to numbered paragraphs of pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. Thus, a reading of the verification column of the election petition and Order 6 Rule 15, CPC and Sec. 83 of the RP Act, 1951, it is clear that the election petition has been verified in accordance with the above provisions. Hence, the issue is answered in favour of the election petitioner.

Issue No. 8 :

No evidence has been adduced on this issue to show that a true copy of the election petition was not served nor the copy served on the respondent is marked. Hence, this issue also is answered in favour of the petitioner.

Issue No. 9, 10 and 11 :

"These issues are taken together : The result of the election was declared on 27-3-2002. Under Sec. 81(1) of the Representation of Peoples Act, 1951, an election petition has to be filed within 45 days from the date of election of the returned candidate. This election petition was presented on 9-5-2002. On the said day, the Registrar (Judicial) of this Court returned the petition with the endorsement "seen and returned to the petitioner—sd/- by the Registrar dt: 9-5-2002" Later, it was presented by the petitioner at 4.10 p.m on 27-5-2002 which was accepted by the Registry of this Court. Since the election petition was accepted on 27-5-2002, the contention of the 1st respondent is that the election petition must be held to have been presented beyond 45 days, therefore, the Election Petition is barred by time.

In answer to the submission of Sri G. S. Visveshwara, learned counsel for the Election Petitioner submitted that, by a notification issued by the High Court of Karnataka, the High Court remained closed for summer vacation from

22-4-2002 to 26-5-2002 (bdi). Since the election petition was filed during summer vacation within the period of limitation and it was returned to be presented on the re-opening day, the same was filed on the re-opening day i.e., on 27-5-2002, hence, having regard to the notification and Sec. 10 of General Clauses Act, the Election Petition filed on 27-5-2002, should be held in time. The contention deserves to be accepted.

High Court of Karnataka has issued Notification No. HCB-95 dated 17-4-2002, the same reads as under :

HIGH COURT OF KARNATAKA, BANGALORE
NOTIFICATION NO. HCB-95/2003 Dated 17-4-2002
SUMMER VACATION OF 2002

The High Court will remain closed for Summer Vacation from Monday the 22nd April, 2002 to Sunday the 26th May, 2002 (both days inclusive).

No appeals, petitions or application of civil nature will be received during the vacation except in cases where it is sought to obtain urgent interim orders like temporary injunction, attachment and/or stay of proceedings.

Criminal appeals, criminal revision petitions and urgent applications in criminal matters will be received during the summer vacation.

During the summer vacation, the office of the High Court will remain open from 10.15 a.m. to 2.00 p.m. from Monday to Friday (both days inclusive) in each week. Saturdays will not be working days during the Summer Vacation. Papers will be received from 10.30 a.m. to 12.30 p.m. on the days on which the office will be open. On the vacation sitting days, the working hours of the office shall be from 10.15 a.m. to 5.00 p.m.

Vacation Benches mentioned hereunder will sit in Court Halls mentioned against them on the SITTING DAYS noted below at 10.30 a.m. during the vacation to hear urgent matters. All matters of the nature referred to above filed upto and inclusive of the day previous to the sitting day will be posted for hearing. But those filed on the sitting day will not be posted on that day, except by special orders of the vacation Bench of the Vacation Judge, as the case may be.

What emerges from the reading of the notification is, no petition could be filed in the High Court unless the petitioner sought for urgent orders like stay, injunction, etc. The election petition is certainly a petition within the meaning of the notification and admittedly in this case, the election petitioner had not sought for any urgent interim orders. According to Sec. 81 of the RP Act, 1951, the petitioner should have filed the election petition on 9-5-2003 on the last date for filing the same which of course she did, but the Registrar (Judicial) returned it on the ground that the court was closed for summer vacation. As per the notification, the courts re-opened on 27-5-2002. Admittedly, the Election Petition was filed on 27-5-2002 i.e., the re-opening day which the petitioner was entitled to file to save limitation having regard to Sec. 10 of the General Clauses Act, 1897 which reads :

Sec. 10 : Computation of time :—

1. Where by any Central Act or regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the court or office is closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open.

Provided that nothing in this Section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

2. This section applies also to all central Acts and Regulations made on or after the fourteenth day of January, 1887.

However, Sri Udaya Holla, learned counsel for 1st respondent made a submission, relying on the decision of this Court in *Naranappa Vs Shankar Alva*—AIR 1973 Mysore 78 and that of the Supreme Court in *Laxman Das Arora Vs. Ganeshi Lal & Ors*—1999(8) SCC 532 that the election petitioner is not entitled to the benefit of Sec. 10 of the General Clauses Act in the facts of this case. Let me refer to the said decision to know how far it advances the case of the 1st respondent.

In *Naranappa's* case, the petitioner *Naranappa* had challenged the election of *Shankar Alva* by filling a petition under Sec. 81 and 83 of the RP Act. The results of the election was declared on 12-3-1972 and the Election Petition was filed on 28-4-1972. A preliminary objection was taken about the maintainability of the petition on the ground that the petition was filed beyond 45 days. While considering the question of delay, the court was called upon to consider the notification issued by the Chief Justice under Sec. 23(2) of the Mysore High Court Act, 884. As per the notification, the

Karnataka High Court was recessed for summer vacation from 17-4-1972 to 21-5-1972. The notification read, as follows: "election petitions presented to the High Court under Sec. 81 of the RP Act, 1951 will however be received during the vacation." This Court held that in view of the said declaration made in the notification, the defeated candidate was entitled to file the election petition even during summer vacation when the court was closed. Under the circumstances, the petitioner was not entitled to take the aid of Sec. 10 of the General Clauses Act.

In Laxman Das Arora's case, the Supreme Court while considering a similar question on limitation in P. Naranappa's case interpreting the notification issued by Punjab & Haryana Court which is to the following effect: "It is hereby notified for general information that the Court of Punjab & Haryana at Chandigarh will be closed for civil business except for hearing election petitions or any other matter arising out of Representation of Peoples Act, 1951 the Court will resume sitting on 1-7-1996, held there was no impediment on a defeated candidate to file the election petition during the summer vacation declared by the Punjab & Haryana High Court. Hence, Sec. 10 of the General Clauses Act did not come to his rescue". But the facts in this case are quite different. In this case, the notification referred to above specifically prohibited filing of all petitions, the exception being made only to criminal appeals or criminal revision petitions. Election petition cannot be considered as a criminal appeal or criminal revision petition so as to contend that the notification permitted the election petition to be filed during summer vacation.

In view of the prohibition in the notification for filing election petitions during summer vacation, the election petitioner was entitled to take the aid of Sec. 10 of the General Clauses Act and the election petition filed on the re-opening day on 27-5-2002, should be held as filed within time. Hence, the issue is answered in favour of the election petitioner.

Issue No. 9 : The records reveal that the cost as required under Sec. 117 of the Representation of Peoples Act has been deposited on 27-5-2002. Therefore, there is it has to be held that the election petitioner has complied with the requirements of Section 117 of the Representation of Peoples Act. The issue is answered accordingly, in favour of the petitioner.

For the reasons stated above, and in view of the findings on all issues, the election petition deserves to be dismissed and is dismissed with costs of Rs. 15,000/- (Rupees Fifteen thousand only). The security deposit of Rs. 2,000/- deposited on 27-5-2002 is order to be paid to 1st respondent towards the costs ordered to be paid.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED, THIS THE 20TH DAY OF NOVEMBER, 2003

BEFORE

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

ELECTION PETITION NO. 2/2002

BETWEEN:

Smt. D.K. Tharadevi Siddhartha
W/o. Siddhartha Reddy
R/at. 'Krishna Ashraya'
Mudigere, Chikmagalur-577132

... PETITIONER

(By Sri. G.S. Visveshwara for Sri Aravind Kumar, Adv.)

AND :

1. Dr. Vijaya Mallia
S/o. Late Vittal Mallia
R/at. # 3, Vittal Mallia Road
Bangalore.
2. Sri. Janardhana Poojary
S/o. Jarappa Poojary
R/at. Channamma Kutira
B. C. Road, Bantwal Taluk
D.K. District.
3. Smt. Prema Cariappa
W/o. I M Cariappa
R/at. # 33/4, Thyagaraj Layout
Maruthi Sevanagar, Bangalore-33

4. Sri. M. V. Rajashekaran
S/o. Veerashetty
R/at. # 20/1, Kanakapura
Basavanagudi,
Bangalore-04.

...RESPONDENTS

(By Sri. Udaya Holla for Sri. S. R. Shivaprakash, Adv., for R-1; R-2 to 4 are placed exparte)

This Election Petition is filed U/s. 81 of the Representation of the People Act, 1951, by the petitioner candidate for the Biennial-election to the Council of State 2002 for Rajya Sabha held on 27-3-2002 praying that this Hon'ble Court may be pleased to;

1. *Declare that the election of the 1st respondent as contained in annexure 'J' declaring the 1st respondent as duly elected to the council of states as void under section 100 (1)(a) and Section 100(1)(d)(i) of Representation of Peoples Act, 1951; and*
2. *Declare the petitioner as the elected candidate to the Council of states in the place of the first respondent; and*
3. *Grant such other relief as deemed fit by this Hon'ble Court having regard to the facts & circumstances of the Case, in the interest of justice and equity.*

This Election Petition coming on for evidence from 16-12-2002 to 7-3-2003 and for arguments between 13-3-2003 to 7-10-2003 and for pronouncement of order on 20-11-2003, in the presence of Sri. G.S. Visveshwara for Sri. Arvind Kumar, Advocates for petitioner and Sri. Udaya Holla for Sri. S. R. Shivaprakash, Advocates for respondent No. 1 and respondent Nos. 2 to 4 are placed exparte vide Court order dtd. 11-7-2002 and that for the reasons stated in the order, it is ordered and decreed that the election petition be and the same is hereby dismissed with costs of Rs. 15,000/- (Rupees fifteen thousand only). And the Security deposit of Rs. 2000/- deposited by the petitioner on 27-5-2002 is ordered to be paid to the First respondent towards the costs ordered by this Hon'ble Court.

SD/-

REGISTRAR (JUDICIAL)

[NO. 82/CS-KT/2/02/2003]

By Order,

A. K. MAJUMDAR, Secy.